

Key Points

- The ASEAN member states entered into legally binding agreements establishing rice reserves to mitigate the impact of natural disasters and major calamities on food security.
- To date, the parties have entered into the Agreement on the ASEAN Food Security Reserve (AFSR) Agreement and its two protocols, and the ASEAN Plus Three Emergency Rice Reserve (APTERR) Agreement.
- Any disputes relating to the interpretation, application, or implementation of the AFSR Agreement are resolved through the procedure in the 2004 ASEAN Protocol on Enhanced Dispute Settlement Mechanism. Those under the APTERR Agreement are resolved through the mechanism in Article IX. To date, these mechanisms remain untested.
- To build and sustain the momentum gained for the rice reserves, it is suggested that ASEAN member states: (i) increase cooperation and financial support for the APTERR; (ii) increase the speed of negotiation, coordination, and response for emergency food aid releases; (iii) eliminate the consensus requirement for APTERR Council decisions in disputes; and (iv) incorporate an enforcement and compliance mechanism for APTERR Council decisions.

Building Food Security in Asia through International Agreements on Rice Reserves

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Through the years, Asian states have forged relationships to achieve food security by establishing emergency food reserves (Briones et al. 2012). These relationships are institutionalized in joint statements, declarations, and agreements of intergovernmental organizations (Hirano 1996). The outcome is to preserve and enhance development and stability in the Asian region.

What are these instruments? Do they have binding force? How should historically nonconfrontational states resolve disputes and enforce decisions? This policy brief outlines the institutional history of the Agreement on the Association of Southeast Asian Nations (ASEAN) Food Security Reserve (AFSR) Agreement and the ASEAN Plus Three Emergency Rice Reserve (APTERR) Agreement, and discusses their key features, binding force, and dispute resolution mechanisms.

It concludes with an analysis of their efficacy and the following policy implications: First, the current APTERR stocks are inadequate to meet its objectives. Parties should increase cooperation and financial support for the APTERR. Second, the parties should increase the speed of negotiation, coordination, and response for acute and emergency food aid (Tier 3) releases after a calamity. Third, the parties should eliminate the consensus requirement for APTERR Council decisions in disputes. Finally, the parties should incorporate an enforcement and compliance mechanism for APTERR Council decisions; otherwise, its decisions would remain pyrrhic victories.

Background on the Association of Southeast Asian Nations

On 8 August 1967, five countries (Indonesia, Malaysia, the Philippines, Singapore, and Thailand) established ASEAN as an association for regional cooperation. ASEAN

¹ The views and opinions expressed in this brief are those of the author only and do not reflect the views of ACCRALAW.



further expanded its membership to include Brunei Darussalam, Viet Nam, Myanmar, the Lao People's Democratic Republic, and Cambodia.

The aim, purpose, machinery, and rules governing the membership of this intergovernmental organization were enshrined in the 1967 ASEAN Declaration (or Bangkok Declaration). In it, the members acknowledged the existence of their mutual interests and common problems and their responsibility to strengthen the economic and social stability of the region. One of the objectives of the organization was to collaborate more effectively for the greater utilization of agriculture to raise living standards (ASEAN Declaration, Article II.5).

On 24 February 1976, ASEAN issued the Declaration of ASEAN Concord. This expanded the definition of "cooperation" to include the elimination of hunger as one of its primary concerns (paragraph 3) and recognized that natural disasters and major calamities can retard the development of states (paragraph 4).

Agreement on the ASEAN Food Security Reserve

To mitigate the impact of natural disasters on food security, ASEAN established a rice reserve on 4 October 1979. The rice reserve was developed to alleviate poverty and to eradicate malnourishment in the region without distorting normal trade in the global market. The first five ASEAN members signed the AFSR Agreement creating the ASEAN Emergency Rice Reserve (AERR). The AFSR Agreement entered into force—that is, became legally binding—on 24 July 1980 (Article IX.3).

The key components of the AFSR Agreement are as follows: The AERR was composed of earmarked quantities of rice (Article IV.3) that each country promised to make available to members in an emergency situation. The initial amount of earmarked rice was 50,000 metric tons (Article IV.2). A member may access the AERR only after a declaration of a state of emergency. Under Article IV.5 of the AFSR Agreement, three requisites must be present before a state is considered to be in an "emergency condition": It must suffer extreme or unexpected natural or human-induced calamity, be unable to cope through its national food reserve, and be unable to procure the food supply through normal trade.

The release of rice from the AERR must follow the procedural outline in Article V of the AFSR Agreement.

First, the country in need must notify other members of the emergency and the amount of rice required. Second, countries negotiate bilaterally on the prices, terms, and conditions of payment. Third, the countries make the necessary arrangements for the release of rice. Finally, the member in need informs the ASEAN Food Security Reserve Board (AFSRB) of its request (Article V.5).

The AFSRB supervises and coordinates the implementation of the AFSR Agreement (Article VIII). It is composed of one representative of each member state (Article VIII.2), and its obligations are codified in the terms of reference annexed to the AFSR Agreement.

One of the obligations of the AFSRB is to review the implementation of the AFSR Agreement (paragraph 6). However, the AFSRB has no authority to impose penalties on members who fail to earmark their rice or comply with their commitments.

Protocols I and II of the Agreement on the ASEAN Food Security Reserve

On 22 October 1982, ASEAN amended the AFSR Agreement by expanding the powers of the AFSRB to include the authority to facilitate bilateral negotiations on prices and other conditions of long-term rice contracts (AFSR Protocol I). On 23 July 1997, ASEAN further amended the AFSR Agreement: first as regards membership with Brunei Darussalam and Viet Nam joining ASEAN and becoming parties to its major treaties; and second, as regards increasing the initial quantity of earmarked rice from 50,000 to 67,000 metric tons (AFSR Protocol II, Article II). Finally, the AFSRB must submit reports of its activities and respond to the Senior Officials Meeting of the ASEAN Ministers on Agriculture and Forestry (AFSR Protocol II, Article V).

Resolution of Disputes

The AFSR Agreement created legally binding obligations for its parties. Under international law, these legal obligations are known by a variety of names, ranging from conventions and agreements to statutes, declarations and covenants (Hudson 1931; Evans 1995). Irrespective of the name used, all transactions refer to written agreements where states intend to bind themselves legally—to act in a particular way or to set up specific relations between themselves (Shaw 2008).

In case of a dispute regarding the AFSR Agreement, the parties may resolve it through the procedures in the 2004 ASEAN Protocol on Enhanced Dispute Settlement Mechanism (EDSM). The AFSR Agreement and its Protocol II are included in the Appendix I list of EDSM-covered agreements.

Under Article III.2 of the EDSM Protocol, a state may resort to dispute resolution with another state in three instances: a benefit accruing to it is nullified because of the acts of the other state, the other state's acts impair the object and purpose of the agreement, and any analogous situation. As far as possible, all differences must be settled amicably between the states through consultation (Article III). A request for consultation is made by informing the other state as well as the Senior Economic Officials Meeting (SEOM).

If the dispute remains unresolved, the SEOM, upon request, may establish a panel to resolve it (EDSM Protocol, Article V). The panel will make an assessment of the dispute and make recommendations on the case (Article VII), which are encapsulated in the Panel Report.

The SEOM may adopt the Panel Report and terminate the case (EDSM Protocol, Article IX). However, if a state disagrees with the decision, it may appeal to an Appellate Body established by the ASEAN Economic Ministers (Article VII). The Appellate Body may uphold, reverse, or modify the legal findings and conclusions of the panel (Article IX.12).

After a final decision is made under the EDSM, states must immediately comply with the decision of the panel and/or Appellate Body adopted by the SEOM (EDSM Protocol, Article XV). If a state refuses to comply with the decision, it will be subjected to suspension of concessions or be required to pay compensation (Article XVI).

Nonutilization of the Agreement

In its 30-year existence, the AERR stocks were never utilized (Trethewie 2013), and the EDSM dispute resolution mechanism was never tested.

The case of Indonesia in 1997–1998 particularly highlighted the weaknesses of the AERR. Indonesia experienced serious food shortage problems and drastically increased its imports due to El Niño-induced drought and forest fires. Technically, this qualified as an “emergency condition” under the AFSR Agreement.

However, instead of utilizing the AERR, Indonesia obtained a loan from the International Monetary Fund and World Bank (Yoshimatsu 2014).

Policy makers noted the weaknesses of the AFSR and exerted efforts to revolutionize their policies and programs to enhance food security in the region.

ASEAN Plus Three

ASEAN acknowledged that regional development did not occur in a vacuum; countries would benefit immensely from strengthening and deepening relations with their East Asian neighbors.

Consequently, the ASEAN Plus Three was born, composed of the ASEAN member states plus the People's Republic of China, Japan, and the Republic of Korea. This collaboration was institutionalized through the Joint Statement on East Asia Cooperation issued on 28 November 1999.

East Asia Emergency Rice Reserve

On 11 October 2002, the ASEAN Plus Three announced the launch of its pilot project: the East Asia Emergency Rice Reserve (EAERR). This was based on an earlier prototype of the regional reserve, which was initiated and supported by Japan (Trethewie 2013).

ASEAN Plus Three Emergency Rice Reserve Agreement

On 7 October 2011, the ASEAN Plus Three Emergency Rice Reserve (APTERR) Agreement was signed by the 10 ASEAN member states, the People's Republic of China, Japan, and the Republic of Korea. The APTERR Agreement entered into force on 12 July 2012 (Briones 2012).

On 28 October 2012, the parties agreed by consensus to locate the APTERR Secretariat office in Thailand pursuant to Article VIII of the APTERR Agreement.

The following year, the APTERR was officially established as a permanent mechanism, and the APTERR Secretariat began its operations. During the first 5 years, the activities of the Secretariat were supported by the operational cost account funded by the APTERR parties. This was complemented by the Endowment Fund to provide

long-term financial support (APTERR Agreement, Article VI.2). The breakdown of the operational costs and the Endowment Fund are illustrated in Tables 1 and 2.

The key components of the APTERR Agreement are as follows: first, the APTERR was established to meet emergency requirements and to achieve humanitarian purposes (Article III.1a). It retained the AFSR definition of an “emergency condition” (Article I.e). Second, unlike the AERR, which comprised only earmarked rice (AFSR Agreement, Article IV.3), the APTERR consists of earmarked rice and physical rice stocks. The APTERR has an earmarked emergency reserve, stockpiled emergency rice reserve of cash and rice, and other forms of reserve such as future contracts or donations in cash or kind (Article III.2).

The stocks are made available through a three-tier system: Tier 1 – special commercial contracts or sales; Tier 2 – emergency grants and loans; and Tier 3 – donated rice in times of acute emergencies (Trethewie 2013).

1. Earmarked Emergency Rice Reserve

This is a certain quantity of milled rice and/or processed rice that is voluntarily designated by the parties for the purpose of meeting an emergency requirement of one or more of the parties (APTERR Agreement, Article I.d).

The total earmarked emergency rice reserve of the APTERR is 787,000 metric tons; its breakdown is illustrated in Table 3.

2. Stockpiled Emergency Rice Reserve

This is a reserve in the form of cash and/or in-kind (rice), which, if necessary, may be donated through appropriate international organizations and/or nongovernment organizations. This stockpiled reserve is used as an emergency stock to provide preparedness for an emergency situation such as a natural calamity or for poverty alleviation or malnourishment eradication programs.

Table 1: Annual Contribution to the Operational Costs, 2012–2016

ASEAN Member States	Contribution to the Operational Costs (in US\$)
Brunei Darussalam	8,000
Indonesia	8,000
Malaysia	8,000
Philippines	8,000
Singapore	8,000
Thailand	8,000
Viet Nam	8,000
Cambodia	6,000
Lao People’s Democratic Republic	6,000
Myanmar	6,000
Plus Three Countries	Contribution to the Operational Costs (in US\$)
People’s Republic of China	75,000
Japan	75,000
Republic of Korea	75,000
Total	299,000 per annum

ASEAN = Association of Southeast Asian Nations.

Source: ASEAN Plus Three Emergency Rice Reserve Agreement. 2011. Attachment 2.

Table 2: Capital Contribution to the Endowment Fund

ASEAN Member States	Contribution to the Endowment Fund (in US\$)
Brunei Darussalam	107,500
Indonesia	107,500
Malaysia	107,500
Philippines	107,500
Singapore	107,500
Thailand	107,500
Viet Nam	107,500
Cambodia	83,000
Lao People’s Democratic Republic	83,000
Myanmar	83,000
Plus Three Countries	Contribution to the Endowment Fund (in US\$)
People’s Republic of China	1,000,000
Japan	1,000,000
Republic of Korea	1,000,000
Total	4,001,500

ASEAN = Association of Southeast Asian Nations.

Source: ASEAN Plus Three Emergency Rice Reserve Agreement. 2011. Attachment 2.

Table 3: Earmarked Rice Quantity of Each Country

ASEAN Member States	Earmarked Emergency Rice Reserve (metric tons)
Brunei Darussalam	3,000
Cambodia	3,000
Indonesia	12,000
Lao People's Democratic Republic	3,000
Malaysia	6,000
Myanmar	14,000
Philippines	12,000
Singapore	5,000
Thailand	15,000
Viet Nam	14,000
Plus Three Countries	Earmarked Emergency Rice Reserve (metric tons)
People's Republic of China	300,000
Japan	250,000
Republic of Korea	150,000
Total	787,000

ASEAN = Association of Southeast Asian Nations.

Source: ASEAN Plus Three Emergency Rice Reserve Agreement. 2011. Attachment 2.

To facilitate the implementation of obligations, the members created a Rice Information Exchange (APTERR Agreement, Article V). They agreed to provide the Secretariat with regular reports and information on policies, programs, food security, and other aspects of food supply (Article V.1). The data are appraised and circulated among members (Article V.2), subject to rules on confidentiality (Article V.3).

The members also set up the APTERR Council (APTERR Agreement, Article VII) with comprehensive powers codified in the terms of reference annexed to the agreement. Similar to the AFSRB, the APTERR Council is composed of one representative of each member country (Article VII.2). Its decisions are made on the basis of consensus among all the members (Article VII.3).

Under the terms of reference, the APTERR Council has no explicit authority to impose penalties on members who

fail to earmark their rice compliant with their obligations. However, paragraph 12 is a catch-all phrase authorizing the APTERR Council to perform "such other functions as it may deem necessary to effectively implement and carry out the provisions of the agreement" (APTERR Agreement, Attachment 3, paragraph 12). Hence, there is basis to argue that the APTERR Council may impose penalties on countries if this will effectively implement the agreement. Nevertheless, deciding on whether it has the power to impose a penalty and whether it will exercise that power in a specific case are separate decisions, which must both be decided by consensus (Article VIII.2).

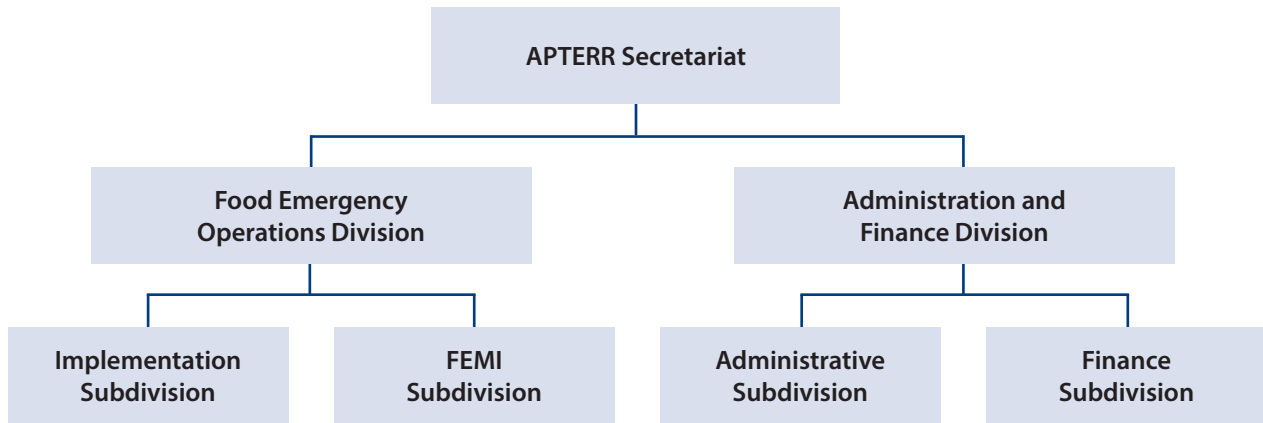
It is noteworthy that the APTERR places more emphasis on national interest as well as national laws and regulations than the AFSR. To illustrate, first, APTERR Agreement states that it will be implemented in accordance with the respective national laws, regulations, and budgetary appropriations of each country (Article II.3). Second, parties may unilaterally suspend in whole or in part the implementation of the agreement for reasons of national interest including national security and public health (Article X.8). Finally, parties may unilaterally withdraw from the agreement without specified reasons, provided they comply with the stipulated procedure (Article X.9).

Operations of the APTERR Secretariat

The main function of the APTERR Secretariat is to facilitate the implementation of APTERR programs (APTERR Agreement, Article VIII.1). Any implementation of the policies, plans, programs, and decisions must be in accordance with the guidelines set by the APTERR Council (Article VII.4).

The APTERR Secretariat was formed by agreement of the APTERR parties (APTERR Agreement, Article VIII); its functions and responsibilities were adopted by the APTERR Council (Article VIII.1). Currently, its office is located in Thailand as part of an in-kind contribution from the government. Under Article VIII.2 of the APTERR Agreement, the location of the APTERR Secretariat is decided by consensus of the parties. Its organizational structure is provided in Figure 1.

Figure 1: Organizational Structure of the APTERR Secretariat



APTERR = ASEAN Plus Three Emergency Rice Reserve, FEMI = Food Emergency Monitoring and Information.

Source: APTERR Secretariat.

Implementation of the EAERR and APTERR

EAERR Pilot Project

Members have made significant use of the EAERR over the years. Under Tier 1, in 2010, Viet Nam released 10,000 metric tons of rice to the Philippines. No releases have been made under Tier 2 (Trethewie 2013). Tier 3 releases have been the most dynamic. In 7 years, a total of 2,640 metric tons of rice were contributed through Tier 3 programs. This has assisted more than 200,000 beneficiaries in five countries. The breakdown of the implementation of the EAERR pilot project is illustrated in Table 4.

APTERR

During its preparatory stage, there were 20 transactions under Tier 3 programs. Since the APTERR was transformed into a permanent scheme, 8,260 metric tons of rice have been contributed. These transactions are illustrated in Table 5.

Resolution of Disputes

Similar to the analysis on the binding nature of the AFSR Agreement, the APTERR Agreement creates legally binding obligations for its parties, since the states have

the intention to be bound and stipulate that they will act in a particular way.

If any dispute arises between two or more parties relating to the interpretation, application, or implementation of the APTERR Agreement, they must follow the mechanism stipulated in Article IX. First, they should attempt to settle the dispute through internal consultation or through any other peaceful means that they agree upon (Article IX.1). Second, if they are unable to reach a settlement, they may refer the dispute to the APTERR Council (Article IX.2).

Once either the parties or the APTERR Council makes a decision, the APTERR is bereft of provisions on the enforcement of decisions. This is unlike the EDSM, which has the coercive force of compensation and suspension (EDSM Protocol, Article XVI).

However, this does not necessarily mean that decisions cannot be enforced. The catch-all provision in paragraph 12 of the terms of reference is basis to argue that the APTERR Council may have enforcement powers, if enforcement is crucial for the effective implementation of the APTERR Agreement (Attachment 3). To date, no state has availed of the dispute resolution mechanism.

Discussion and Conclusions

The AFSR and APTERR are the result of concerted efforts to achieve food security in the Asian region. Notably, both the volume and utilization of the rice reserves have

Table 4: Implementation of the Tier 3 Programs during the EAERR Pilot Project, 2004–2010

Year	Program	Recipient Country	Beneficiaries	Quantity (MT)
2005	Poverty alleviation program	Lao People's Democratic Republic	87 households and students in Vientiane	13
2006	Flash flood victims and rehabilitation program	Indonesia	9,992 people in Sampang and 22,825 people in the Jember district	200
2006	Volcanic eruption and typhoon victims	Philippines	154,500 households in four provinces	930
2007	Flood victims and poverty alleviation program	Cambodia	11,798 households in five provinces	435
2008	Flood victims	Indonesia	18,182 households in Central and East Java	182
2008–2009	Rehabilitation program for Cyclone Nargis victims	Myanmar	13,120 people	320
2010	Rehabilitation program for Typhoon Ketsana victims	Lao People's Democratic Republic	9,207 villages	347
2010	Rehabilitation program for flash flood and typhoon victims	Philippines	7,137 households in Manila and Ifugao provinces	520

EAERR = East Asia Emergency Rice Reserve, MT = megaton.

Source: ASEAN Plus Three Emergency Rice Reserve Secretariat.

Table 5: Implementation of the APTERR Tier 3 Programs Since 2013

Year	Program	Recipient Country	Beneficiaries	Quantity (MT)
2013	Rehabilitation program for Typhoon Pablo victims	Japan	Philippines	230
2013	Drought and flood	Japan	Lao People's Democratic Republic	400
2014	Emergency response to Super Typhoon Haiyan	PRC	Philippines	800
		Thailand		5,000
		Malaysia		350
2015	Preposition of stockpiled rice reserve	Japan	Philippines	580
			Cambodia	210
2016	Preposition of stockpiled rice reserve	Japan	Philippines	240
			Lao People's Democratic Republic	225
2017	Rehabilitation program for Typhoon Ketsana victims	Lao People's Democratic Republic	Myanmar	500
		Cambodia	250	
2017	Preposition of stockpiled rice reserve	Japan	Myanmar	500

APTERR = ASEAN Plus Three Emergency Rice Reserve, PRC = People's Republic of China.

Source: APTERR Secretariat.

grown. Although the agreements have progressed, the AFSR and APTERR dispute resolution mechanisms remain untested. This is due to the following factors. First, the limited use of the reserve makes disputes less likely to escalate. Second, the majority of the releases were under Tier 3, where rice is dispatched from stockpiled reserves after a disaster (Toyoda and Suwunnamek 2011). It is unlikely that a food aid recipient will sue its donor. Third,

ASEAN member states agreed to prevent disputes from arising and to settle them through friendly negotiations (Treaty of Amity and Cooperation in Southeast Asia, 1976, Article XIII). They often resort to political, diplomatic, or relations-based means rather than legal methods (Kraichitti 2015). Historically, ASEAN member states have shown preference for other modes of dispute resolution with a third-party organization mediating, such as the

World Trade Organization and the International Court of Justice (Kraichitti 2015).

Recommendations

The following policy implications are suggested to build and sustain the momentum gained for rice reserves:

First, increase cooperation and financial support for the APTERR. At present, ASEAN rice demand is 500,000 metric tons per day, while the APTERR physical stock of 787,000 metric tons is only sufficient to cover 1.5 days of consumption (Montesclaros 2015).

Second, the parties should increase the speed of negotiation, coordination, and response for Tier 3 releases after a calamity. The Philippine experience after super-typhoon Bopha shows that timing is essential. In late 2013 after Super Typhoon Bopha, the Philippines made an emergency request. Members fulfilled the request, but timeliness was a major concern as the rice trickled in even up to 18 months after the emergency.

Third, the parties should eliminate the consensus requirement for APTERR Council decisions in disputes. Consensus has limited the role of ASEAN as a venue for resolving problems (Phan 2013). To illustrate, when Indonesia and Malaysia were engaged in the Ligitan/Sipadan territorial dispute, Indonesia attempted to use the dispute resolution mechanism under the Treaty of Amity and Cooperation. Malaysia opposed this, and both were left with no other option but to refer the dispute to the International Court of Justice (Salleh 2007). This mirrors the earlier dispute between Thailand and Cambodia over the Temple of Preah Vihear. The United Nations Security Council gave ASEAN the authority to settle the conflict through the ASEAN mechanism. However, due to lack of consensus, the case was referred to the International Court of Justice (Dewi 2013).

Finally, the parties should add an enforcement and compliance mechanism for APTERR Council decisions. Otherwise, its decisions would remain pyrrhic victories. As discussed, this may be expanded under paragraph 12 of the terms of reference.

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